It follows that their Lordships allow Grace's appeal against Sharp, but that they dismiss Hai Nguan's appeal against Sharp. The order of Choor Singh J. that Sharp do pay to Grace the sum of US$253,658.00 with US$127,591.36 by way of interest must be restored, and Hai Nguan must indemnify Sharp in respect of those sums. Sharp must pay the costs of Grace before Choor Singh J., the Court of Appeal and their Lordships' Board. Hai Nguan must pay the costs of Sharp before Choor Singh J., the Court of Appeal and their Lordships' Board, and must indemnify Sharp in respect of the costs payable by them to Grace as aforesaid and in respect of the costs payable by them to Phillips as ordered by Choor Singh J.

Appeal of first appellants allowed; Second appellants' appeal dismissed.

Solicitors: *Holman, Fenwick & Willan; Jaques & Lewis; Elborne Mitchell & Co.*

SINGAPORE REPORTS

TAN MUI CHOO & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) August 4, 1986]

[Singapore – Criminal Appeal No. 6 of 1983]

Penal Code, s. 300, exception 7 – Murder – Plea of diminished responsibility – Whether sufficient evidence to support plea.

One Adrian Lim, his wife, the first appellant, and his mistress, the second appellant, were charged, tried and convicted by the High Court of the murders of two children, a Chinese girl, Agnes Ng Siew Hock, who was 8 years old, and a Malay boy, Ghazali bin Marzuki, who was 11 years old. They were both killed in his flat on January 24, 1981 and February 6, 1981 respectively. The reason given for the killings was that Adrian Lim was angry with the police who in the months preceding the killings had been investigating him on a case of rape reported against him and he wanted to avenge the police. Two of the accused, Adrian Lim's wife and his mistress appealed against their convictions and sentences. They pleaded diminished responsibility. Adrian Lim did not appeal against his conviction and sentence.

Held, dismissing both appeals: on the totality of evidence available before the court both the appellants have not established their plea of diminished responsibility.

Cases referred to:

(1) *R.* v. *Matheson* [1958] 2 All E.R. 87.
(2) *R.* v. *Bailey* [1961] Crim. L.R. 828.
(3) *Walton* v. *The Queen* [1978] 1 All E.R. 542, 546.

COURT OF CRIMINAL APPEAL.

Francis T. Seow for the first appellant.
Nathan Isaac for the second appellant.
Loke Yoon Kee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: (delivering the Judgment of the Court) One Adrian Lim, his wife, the first appellant, and his mistress, the second appellant, were charged, tried and convicted by the High Court of the murders of two children, a Chinese girl, Agnes Ng Siew Hock, who was 8 years old and a Malay boy, Ghazali bin Marzuki, who was 11 years old. They were both killed in his flat on January 24, 1981 and February 6, 1981 respectively. Adrian Lim was angry with the police who in the months preceding the killings had been investigating him on a case of rape reported against him and he wanted to avenge the police. Three of them also faced another charge in the High Court

of murder by causing the death of one Loh Ngak Hua, the 25 year old husband of the second appellant, on January 7, 1980 at a time when the second appellant and Adrian Lim were living together in adultery. In view of their convictions of the murders of the two children the charge for the murder of Loh Ngak Hua was stood down. The two appellants brought this appeal before us. Adrian Lim has not.

Throughout their trial which lasted 41 days the appellants and Adrian Lim did not and indeed could not dispute the overwhelming evidence led by the prosecution which proved the culpable homicides. However, the appellants claimed that they were entitled by virtue of *Exception* 7 of section 300 of the Penal Code to the verdict of culpable homicide not amounting to murder because the appellants were allegedly suffering at the times of the offences abnormalities of their minds that substantially impaired their mental responsibilities for their acts. Before we deal with this defence we should mention that the second appellant had pleaded the defence of insanity under section 84 of the Penal Code which was rejected by the learned trial Judges. Counsel for the second appellant did not pursue this defence before us.

The bizarre circumstances under which three people lost their lives deeply involved Adrian Lim, a pervert and an evil charlatan who studied and learned occult practices to prey upon women and others who were in distress and who were therefore superstitiously vulnerable. At the time of the commission of the offences, Adrian Lim was 39 years old. He started regular working life with Rediffusion, a broadcasting company, and worked as a wireman for three years during which, no doubt, he acquired the knowledge required to use (as he later did) electricity for shock treatments. After that job, he became a bill collector in the same company for the next 11 years. He was married to one Lilian Tan and had two children by that marriage. Towards the latter part of his working life as a bill collector he became progressively involved in black magic and occult practices. In 1973 he met a woman charlatan by the name of Susan. Through and acting with her Adrian Lim practised as a medium and exploited many dance hostesses and prostitutes for financial gain and sexual pleasures. In the course of these nefarious activities in 1974 he met the first appellant, then a bar girl. In those circumstances, it was not surprising that she eventually from 1975 agreed to support him from her immoral earnings as a prostitute. He thereafter resigned from his job. Because of this adulterous relationship, Lilian Tan divorced Adrian Lim. Adrian Lim and the first appellant continued with various immoral activities. They took to the stage as a performing duo in which the first appellant was a strip-teaser.

On June 11, 1977 Adrian Lim married the first appellant. They continued to prey on the gullible with Adrian Lim practising as a medium in the course of which he sold charmed perfumes, amulets, dispensed demadon (Roche 30) capsules or applied electric shocks on their victims purportedly to drive away the devil from the victims. At the same time, Adrian Lim's hold over the first appellant was such that he managed to deceive the first appellant into accepting the ruse that because of his alleged heart ailment he needed to be rejuvenated by having sex with girls below his age. She even brainwashed her own sister to sleep with him. In all these extraordinary events, which took place over several years, the first appellant co-operated with him and gave him active assistance. Several girls fell prey to their evil devices as a result of which Adrian Lim indulged himself sexually and both of them gained financially. One of the victims was one Christina Chong, a dance hostess from Malaysia, who asked Adrian Lim to read her future, and who later became quite close to Adrian Lim. From time to time she sent him money from Malaysia and such remittances totalled more than $100,000. She was in the company of both appellants at the time between the killings of the two children and she gave evidence as to their demeanour at the material time.

One of the other victims of Adrian Lim and the first appellant was the second appellant whose mother had in desperation sought his help to cure another daughter who was a mental patient. Adrian Lim gave the daughter the electric shock treatment and took advantage of her over a period of a month. The second appellant also sought treatment. In her case Adrian Lim, seeing that she was simple-minded and superstitious, sought a more permanent liaison. He feigned a trance and claimed that the spirits wanted her to be his 'holy' wife. Eventually, the second appellant succumbed to his trickery and lived with him.

At that time, the second appellant was already married to Loh Ngak Hua. To get him out of the way, Adrian Lim managed to win the confidence of Loh Ngak Hua to submit himself to the electric shock treatment as Loh, suffering from headaches, had asked him to cure him. On January 7, 1980

whilst administering the electric shock treatment to both the second appellant and her husband he gave him a fatal voltage and killed him. Adrian Lim told the second appellant that her husband was killed by her stronger spirit which had left her and had entered Loh Ngak Hua. He also taught her to lie to the police that he was electrocuted by an electric fan in an accident. She maintained the cover story to deceive the police. But after the death of her husband the second appellant became depressed and attempted suicide. On May 26, 1980 she was admitted to Woodbridge Hospital during which, however, she did not reveal the true circumstances of her husband's death nor her immoral relationship with Adrian Lim. She was first diagnosed as suffering from psychotic depression (grief reaction) which was later changed to schizophrenia. She was discharged from Woodbridge Hospital within two weeks after admission. Two months after her discharge from hospital she stopped taking the medication dispensed to her.

In September 1980 the first appellant came to know a beautician, one Lucy Lau, who sold her cosmetics and gave her facial treatment. Adrian Lim and the first appellant befriended her and her family. He read her fortune at first and managed eventually to convince her that he was a medium with occult powers. He sought to identify her personal need and vulnerability. Having learnt that Lucy Lau loved her deceased grandmother very much Adrian Lim, aided and abetted by the first appellant, managed to deceive her into believing that if she wanted her grandmother's spirit to reside in her she had to learn to chant some prayers and to sleep with Adrian Lim. On the first occasion, she was given a drink which she was told was 'holy' water but which in fact contained some Roche 30 pills. She became drowsy and Adrian Lim seduced her. Thereafter, she was seduced a few more times. The family of Lucy Lau discovered what had happened. Not unexpectedly, Adrian Lim was assaulted. A report of rape was lodged against him and he was summoned by the police for questioning.

Adrian Lim became angry with the police and told both appellants that he would give the police a lot of trouble by killing children. To this end, he instructed the second appellant to lure children to his flat.

At about 3 pm. on January 24, 1981 the second appellant lured Agnes Ng Siew Hock from a playground near a church in Toa Payoh Estate to the flat. The little girl was drugged with Roche tablets and was sexually abused by Adrian Lim. All three accused drowned her. Before they drowned her, Agnes Ng's finger was pierced and all three sipped the blood. At about midnight they put her body in a travelling bag and left the dead body near a lift in a block of flats nearby.

After the killing of Agnes Ng Siew Hock, Adrian Lim instructed the second appellant to abduct a boy. At about 2 p.m. on February 6, 1981 the second appellant lured Ghazali bin Marzuki from the Clementi Housing Estate to the flat where he was drugged, gagged and tied. They drowned him at about 8 p.m. that night and dumped his body at a playfield near his flat at about 1 a.m. the following morning. Before killing the boy, Adrian Lim again went through the ritual of drawing blood from the boy by means of a syringe and drank it from a glass. The two appellants scooped the blood from the glass and licked the blood.

We now turn to the plea of diminished responsibility canvassed on behalf of both the appellants. The plea, if established on a balance of probabilities by the defence, would reduce the offence of murder to one of culpable homicide not amounting to murder for which the prescribed punishment is imprisonment for life or up to ten years, depending on the degree of *mens rea:* see section 304 of the Penal Code. It was submitted on behalf of both appellants that the evidence adduced by them in each case were such or that the quality of the prosecution rebuttal evidence was so poor that the learned trial Judges were wrong. In considering this submission we have to bear in mind the task of the learned trial Judges as finders of fact like the jury in England. That task has been described by the Privy Council which, after considering *R.* v. *Matheson*[1] and *R.* v. *Bailey*,[2] said in *Walton* v. *The Queen*[3] as follows:

> "These cases make clear that on an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence on the whole facts and circumstances of the case. These include the nature of the killing, the conduct of the accused before, at the time of and after it and any history of mental abnormality. It being recognised that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence. As was pointed out by Lord Parker C.J. in *R.* v. *Byrne* ([1960] 3 All E.R. 1 at 5, [1960] 2 Q.B. 396 at 404, 405), what the jury are essentially seeking to ascertain is whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a broad common sense way."

We would now summarise the evidence bearing on the issue of diminished responsibility of the case of each appellant. In her evidence, the first appellant said that she did not relate well with her parents and was gullible and naive. She met Adrian Lim who in 1975 forced her into prostitution. He subjected her to electric shocks and assaults. She became terrified of him and agreed to do his every bidding. She claimed that in late 1978 she began to accept Adrian Lim's suggestion that she was possessed by an evil spirit. At the time of the killings she claimed she was utterly confused by Adrian Lim and participated in the ritual of drinking blood, even her menstrual blood, and praying to the Hindu deity Goddess Kali believing that such acts would bring her blessing and protection.

Dr. R. Nagulendran, a Consultant Psychiatrist, gave evidence on her behalf. He had examined her after her arrest in March and April 1981, having read her statements given to the police. He found that she was rational and relevant and could describe coherently the circumstances of the killings. In his opinion, the first appellant at the time she committed the offences was suffering from an abnormality of mind, namely, reactive depressive psychosis, severe enough to substantially impair her mental responsibility. The expert witness explained that "although she knew the nature of her acts and that they were contrary to law she nevertheless committed the offences under compulsion and the perceptual delusion that the ritual of consuming blood and child sacrifice was in keeping with her faith in the Hindu deity Goddess Kali." At the material time the said state of mind of the first appellant, according to Dr. Nagulendran, persisted by "the continual use of psychotropic drugs, electrical shocks and threats of psychological and physical assaults" which were all administered by Adrian Lim. After her arrest and the domination of Adrian Lim was removed, she then realised "the magnitude of her horrendous acts."

The prosecution led the rebuttal evidence of Dr Chee Kuan Tsee, a Consultant Psychiatrist in Woodbridge Hospital, who examined the first appellant in March 1981. He reviewed her case in November 1982 and finally during the trial. He had also read the observation notes kept at the Changi Female prison, the statements made by all the accused to the police, the medical report of Dr. Nagulendran and the evidence adduced in court. Dr. Chee reported that the physical examination of the first appellant revealed that she had scars on her head, thigh, feet and on her tongue and that she suffered a perforation of the left ear drum.

On the question whether the first appellant was suffering from any abnormality of mind, Dr Chee disagreed with Dr Nagulendran and came to the conclusion that there was no evidence that the first appellant was suffering from a reactive depressive psychosis which, according to Dr. Nagulendran, was preceded by reactive depression. Whilst agreeing that the threats and assaults of Adrian Lim, the regular electric shock treatments and the domination of Adrian Lim referred to by Dr. Nagulendran in his report under sub-para D(d)(e) & (f) might have made the first appellant depressed, Dr. Chee pointed out there were other evidence which showed that she was not suffering from reactive depression. The first appellant did not give Dr. Chee the impression that she had an unhappy married life with Adrian Lim. As was recorded in the nursing notes the first appellant was quite contented with Adrian Lim who gave her fine clothings, cosmetics and whatever she wanted. During the few months preceding the killings she even visited the beauticians twice weekly. She stole some $14,000 from Adrian Lim to pay for these visits. If she was depressed at the material time, she would have become "increasingly negligent of her personal appearance." According to Dr. Chee's notes, the first appellant had said that she had put up with him not because of the torture and abuses but because of the good times. She also agreed that the electric shocks gave her relief from her headaches and that the electric shock treatments were given for this purpose and not to eradicate evil spirits in her. In her statement to the police the first appellant had admitted that she knew that Adrian Lim had no supernatural powers, that he was a fake and that he resorted to trickery to cheat people of their belongings. In her evidence in court she retracted this part of her statement and claimed that she was acting under the compulsion of Adrian Lim. But there was ample evidence that she actively assisted him in his deceptions, that she agreed with the killing of Agnes Ng Siew Hock when Adrian Lim asked her and that she suggested where to dispose of the dead body.

With regard to the first appellant, the learned trial Judges stated their findings in the following terms:

"... we find that there is evidence that when she lived with (Adrian Lim), there were occasions when she suffered from depression. But, on a balance of probabilities, we find that at the time when (she) took part in the two

murders, she was not suffering from reactive depressive psychosis. That which weighs heavy in our minds is that we had the benefit of hearing and seeing her give evidence in the witness box. The opinion we have of her is that she is an artful and wicked person. In conspiracy with (Adrian Lim), she was at all times a willing party to his loathsome and nefarious acts. We have also considered her case on the footing that she was suffering from mental disease postulated by Dr. Nagulendran. Even if she was suffering from abnormality of mind, we find that the abnormality was not such as substantially impaired her mental responsibility for her acts in the two killings."

In the case of the first appellant we are of the opinion that, having regard to all the evidence adduced at the trial, the learned trial Judges were entitled to conclude that on a balance of probabilities the plea of diminished responsibility had not been established.

We now turn to consider the case of the second appellant in respect of whom the learned trial Judges said:

"..., in contrast to the (first appellant) the (second appellant) is a simple person who can be easily influenced. It is claimed that (she) is suffering from schizophrenia. Admittedly, there is a history of schizophrenia in her family. There is also evidence that she was in Woodbridge Hospital from about the end of May to the first week of July 1980. That diagnosis is in issue between the psychiatrists. On the evidence before us, it appears that there are grounds for the disagreement. However, what comes out clearly in the evidence is that since her discharge from the hospital, some six months before the commission of the offences, she was thereafter at all times in a state of remission. We accordingly have no difficulty in finding that even if the (second appellant) had suffered from schizophrenia, at the time of the commission of the offences she was not suffering from abnormality of mind as substantially impaired her mental responsibility for the two killings."

The evidence revealed that the second appellant's father died when she was about 8 years old. Owing to financial difficulties she was sent to live with an aunt in Penang, Malaysia. She returned to the family when she was 15 years of age. She is the third of six siblings. Her first sister had been suffering from schizophrenia for many years. After her return to Singapore she had worked as a seamstress, factory-hand and later a production operator for 7-8 years till her arrest.

In May 1978 she registered her marriage with Loh Ngak Hua. In early January 1980 he was electrocuted and died in Adrian Lim's flat. In consequence, she became depressed and her attempted suicide landed her in Woodbridge Hospital. She claimed that in October 1979 she met Adrian Lim, a practising medium, who was treating her sister for mental illness. She claimed that Adrian Lim told her she was possessed and was given electric shocks to drive out the devil. She was duped into becoming his 'holy' wife and slept with him. Adrian Lim also turned her against her mother and her husband. After the death of her husband, she agreed to maintain the cover story invented by Adrian Lim.

Her recovery in the hospital was rapid. Except for one or two aggressive episodes, she was not observed to have behaved abnormally. Before the end of the first week, she was no more suicidal nor depressed. A fortnight later she was no longer hostile towards her mother. Whilst in hospital she was in frequent contact with Adrian Lim on the telephone. But she did not reveal the circumstances of her husband's death nor her relationship with Adrian Lim. By June 27, 1980 she claimed that she had made up with her mother with whom she spent her weekend leave. In early July 1980 Dr Kok Lee Peng, who had treated her, was satisfied that she was well and discharged her from the hospital. She continued as an outpatient from July 16, 1980 to January 31, 1981. In these weekly and later monthly visits she was found to be well. Dr. Kok Lee Peng conceded that during this period the second appellant was well. This period coincided with the murder of Agnes Ng. The defence called Dr. Kua Ee Heok who examined the second appellant. From the notes which he had written the doctor said that the second appellant was "generally well" and had "no apparent relapse." It would appear that both Dr. Kok Lee Peng and Dr. Kua Ee Heok were satisfied that the second appellant was on January 31, 1981 in a state of remission, which was a date falling between the dates of the two killings.

We have to recall the evidence bearing on the roles played by the second appellant in the two killings, her demeanour and what she said had gone on in her mind. The murders were planned, which were preceded by earlier acts of abductions, and the killings were carried out with one common object, that was to revenge and confuse the police. The time spent and the efforts made to deceive and drug Agnes Ng so that she could be raped by Adrian Lim suggested other motives. Her participation in bringing Agnes Ng to be raped and in kidnapping Ghazali for ransom did not seem to sit well with her alleged paranoia against her mother. She knew what was going on throughout the two killings and actively took part in removing the dead bodies.

After her arrest, there were no complaints of delusions to Dr. Gandhimuthu at the Changi

Prison Hospital. The entries made in the nursing notes from February 27, 1981 to March 9, 1981 recorded that she heard no voices, no hallucination and was not deluded. In one of the notes, it was recorded that the first appellant had said that the second appellant had told the former in confidence that she (the second appellant) would pretend to be mad so that she would get a lighter sentence. The second appellant was also recorded to have said that she had felt pity for Ghazali at the time of the killing when Adrian Lim applied electric current on the body of the boy.

Dr. Nagulendran also gave evidence on behalf of the second appellant. He expressed the opinion that at the time she committed the offences, she was suffering from an abnormality of mind, *i.e.* schizophrenia, severe enough to have substantially impaired her mental responsibility for her acts. He said she was suffering from schizophrenia long before she met Adrian Lim. At that time she had a primary delusion, that was that her mother wanted to harm her and had charmed her. After coming under the spell of Adrian Lim her illness rapidly deteriorated so much so that she assaulted her mother in a cruel fashion and had poured urine on her head. This, to Dr. Nagulendran, was evidence of emotional blunting. After Adrian Lim had told her that her stronger spirit had left her and killed her husband, the second appellant claimed that she became depressed.

According to Dr. Nagulendran, the second appellant suffered a relapse after her discharge from the hospital. When Adrian Lim asked her, the second appellant accepted his suggestion and agreed to kill the children because she had developed a secondary delusion, namely that killing was good and approved by Goddess Kali. That evidence had to be contrasted against those of Dr. Kok Lee Peng, Dr. Kua Ee Heok and the entries in the nursing notes produced by the defence.

On the other hand, Dr. Chee Kuan Tsee gave rebuttal evidence for the prosecution. He said that even if she had been suffering from schizophrenia she was in remission at the material times. He said that if the alleged delusions were in fact experienced and if they were so preoccupying as to affect her mental responsibility they would also have affected her ability to work. The evidence was that she was able to work. Considering the second appellant's active participation in the abductions and killings, the disposals of the dead bodies and her mental condition during the period after her arrest when she was kept under observation, Dr. Chee said that these evidence confirmed his view that the second appellant was at the material times in a state of remission.

Counsel for the second appellant questioned the quality of the evidence of Dr. Chee in several respects and submitted that, in consequence, the expert evidence of Dr. Nagulendran should have prevailed. We are unable to accept this submission. Having given this submission our careful consideration, we are also of the opinion that looking at the totality of the evidence the learned trial Judges were entitled to make the findings they did.

For these reasons, both the appeals are dismissed.

Appeals dismissed.

Solicitors: *Francis T. Seow; Nathan Isaac & Co.*

TEAM 108 TECHNICAL SERVICES v. HUJONG ENTERPRISES (PTE.) LTD.

[A.C.J. (Sinnathuray J.) January 3, 1986]

[Singapore – Suit No. 5968 of 1985]

Practice and Procedure – Summary judgment – Unconditional leave to defend – Appeal – R.S.C. 1970, 0.14.

Contract – Claim for balance of price for goods sold – Defence that payments made for third party – Invoices and payment vouchers showing contract between parties.

In this case the plaintiffs applied under Order 14 of the Rules of the Supreme Court 1970 for summary judgment. The defendants, however, were given unconditional leave to defend the action. The plaintiffs appealed. The claim of the plaintiffs is for the sum of $217,398.50 being the balance of the price for goods sold and delivered and services rendered to the defendants by the plaintiffs at the defendants', their servants' or agents' request. After the issue and service of the writ of summons, the defendants made part payment of $1,800 leaving a balance of $215,598.50 still due and owing. The defendants admit that they have from time to time made payments to the plaintiffs in respect of the supply and installation of certain sound and lighting equipment but they contend that all such payments were made for and on behalf of a third party, a company, Entlink Sdn. Bhd. The plaintiffs contended, *inter alia*, that it was expressly or impliedly made known to the plaintiffs that the defendants were the principal contracting party and they will be solely liable for the contracted sum.

Held, allowing the appeal: (1) the quotations, the invoices and the payment vouchers all made it clear that